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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 U.S. BANK NATIONAL ASSOCIATION,
10 NOT IN ITS INDIVIDUAL CAPACITY BUT
11 SOLELY AS TRUSTEE OF SW REMIC
12 TRUST 2015-1 C/O SENECA
13 MORTGAGE SERVICING LLC 611
14 JAMISON ROAD, ELMA, NY 14059,

15 Plaintiff,

16 v.

17 CASOLEIL HOMEOWNERS
18 ASSOCIATION; LVDG, LLC d/b/a LVDG
19 SERIES 109; THUNDER PROPERTIES,
20 INC.; and ALESSI & KOENIG, LLC.,

21 Defendants.

Case No. 3:16-cv-00307-MMD-GWF

(Order re Joint Motion to Stay —
ECF No. 27)

22 This case arises out of a homeowner's association ("HOA") foreclosure and
23 involves a constitutional due process challenge to Nevada Revised Statute Chapter 116's
24 notice provisions. Before the Court is a Joint Motion to Stay filed by U.S. Bank National
25 Association, Thunder Properties, Inc., and LVDG LLC. (ECF No. 27.) The Court gave the
26 parties ten (10) days to filed any response to the joint motion. (ECF No. 29.) No party filed
27 an opposition. For the reasons below the Court agrees with the moving parties and finds
28 that a stay is prudent.

29 The Court had *sua sponte* imposed a temporary stay because of the potential
30 impact of the Ninth Circuit Court of Appeals' decision in *Bourne Valley*, where the court
31 found that Chapter 116's notice provisions as applied to a nonjudicial foreclosure of an

1 HOA lien before the 2015 amendment were facially unconstitutional. 832 F.3d at 1157-
2 60. The Court subsequently lifted the stay after the Ninth Circuit issued the mandate in
3 *Bourne Valley*. (ECF No. 6.) The Court reasoned that *Bourne Valley*'s holding is binding
4 precedent unless and until it is reversed, though such finality may not occur for months.
5 (*Id.*) Within days, the Nevada Supreme Court in *Saticoy Bay LLC Series 350 Durango*
6 *104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A.*, 388 P.3d 970
7 (Nev. 2017), reached the opposite conclusion, finding that Nevada's superpriority lien
8 statutes are not facially unconstitutional. The nonprevailing parties in *Bourne Valley* and
9 *Satico Bay* are seeking review of both decisions in the United States Supreme Court. In
10 light of this latest development, the Court finds that a stay is warranted.

11 A district court has discretionary power to stay proceedings in its own court. *Landis*
12 *v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *see also Lockyer v. Mirant Corp.*, 398 F.3d
13 1098, 1109 (9th Cir. 2005). "A trial court may, with propriety, find it is efficient for its own
14 docket and the fairest course for the parties to enter a stay of an action before it, pending
15 resolution of independent proceedings which bear upon the case." *Leyva v. Certified*
16 *Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "When considering a motion to
17 stay, the district court should consider three factors: (1) potential prejudice to the non-
18 moving party; (2) hardship and inequity to the moving party if the action is not stayed; and
19 (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases
20 are in fact consolidated." *Pate v. Depuy Orthopaedics, Inc.*, No. 2:12-cv-01168-MMD-
21 CWH, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012) (quoting *Rivers v. Walt Disney*
22 *Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)) (internal quotation marks omitted). *See*
23 *also Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1067 (9th Cir.
24 2007).

25 These three factors weigh in favor of a temporary stay in this case, though the
26 duration of the stay may be extended depending on whether the Supreme Court will grant
27 *Bourne Valley* and *Well Fargo*'s petitions for a writ of certiorari. Any damage to the parties
28 from a stay will be outweighed by the fees that all parties will surely incur from continued

1 litigation because a decision by the Court could be rendered moot by a decision in the
2 certiorari proceedings before the Supreme Court. Until there is finality on the issue of
3 whether Nevada's superpriority lien statutes are constitutional, a stay will benefit the
4 parties and conserve judicial resources.

5 It is therefore ordered that U.S. Bank National Association, Thunder Properties,
6 Inc., and LVDG LLC's Joint Motion to Stay (ECF No. 27) is granted. This action is
7 temporarily stayed until resolution of the certiorari proceedings before the United States
8 Supreme Court in *Bourne Valley* and/or *Saticoy Bay*. The parties must file a status report
9 within fifteen (15) days from such resolution. The pending Motion to Dismiss (ECF No.
10 19) is denied without prejudice and may be refiled within thirty (30) days after the stay is
11 lifted.

12 DATED THIS 22nd day of June 2017.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE